



Legislation Details (With Text)

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**Type:** Ordinance      **Status:** Filed  
**File created:** 6/5/2012      **In control:** Economic and Housing Development  
**On agenda:** 6/26/2012      **Final action:** 8/1/2012

**Title:** ORDINANCE AUTHORIZING THE ENTRY OF AN INITIAL LICENSE AGREEMENT AND SUBSEQUENT RENEWALS BETWEEN THE CITY OF NEWARK AND THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY AND SUBSEQUENT SUB-LICENSE AGREEMENT BETWEEN THE CITY OF NEWARK AND THE GREATER NEWARK CONSERVANCY, INC., FOR THE USE OF CERTAIN NJSDA LANDS FOR URBAN AGRICULTURE PURPOSES LOCATED IN THE SOUTH WARD, MORE SPECIFICALLY DESCRIBED AS BLOCK 3045, (ALL BUT EXISTING NJSDA OWNED SCHOOL SITE AND LOTS 22, 24 AND 26); BLOCK 3058 (ALL) AND BLOCK 3059 (ALL BUT LOTS 1, 4-8, 33,38 AND 39).

**Sponsors:**

**Indexes:**

**Code sections:**

Date	Ver.	Action By	Action	Result
8/1/2012	1	Municipal Council	Close on Public Hearing and Adopt	Pass
7/3/2012	1	Municipal Council	Adopt on First Reading	Pass
6/26/2012	1	Municipal Council	Advance to First Reading	Pass

**ORDINANCE AUTHORIZING THE ENTRY OF AN INITIAL LICENSE AGREEMENT AND SUBSEQUENT RENEWALS BETWEEN THE CITY OF NEWARK AND THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY AND SUBSEQUENT SUB-LICENSE AGREEMENT BETWEEN THE CITY OF NEWARK AND THE GREATER NEWARK CONSERVANCY, INC., FOR THE USE OF CERTAIN NJSDA LANDS FOR URBAN AGRICULTURE PURPOSES LOCATED IN THE SOUTH WARD, MORE SPECIFICALLY DESCRIBED AS BLOCK 3045, (ALL BUT EXISTING NJSDA OWNED SCHOOL SITE AND LOTS 22, 24 AND 26); BLOCK 3058 (ALL) AND BLOCK 3059 (ALL BUT LOTS 1, 4-8, 33,38 AND 39).**

**WHEREAS**, the New Jersey Schools Development Authority (the "NJSDA") owns certain properties in the City of Newark (the "City"), including specifically certain parcels of land within the NJSDA's University High School / Hawthorne Elementary School Project Area (consisting of all or a portion of three City blocks generally bounded by Hawthorne Avenue, Clinton Place, Nye Avenue and Hobson Street), such NJSDAowned parcels consisting of the following parcels in the City's South Ward (which collectively constitute less than five acres):

Block 3045 (all but existing Board of Education (BOE) owned school sites located at Lots 22, 24 and 26)

Block 3058 (all)

Block 3059 (all but Lots 1, 4-8, 33, 38 and 39)

(collectively, the "NJSDA Parcels"); and

**WHEREAS**, pursuant to N.J.S.A. 52:18A-238 and N.J.A.C. 19:35-3.1, the NJSDA may authorize third-party use and/or occupancy of all or any part of its surplus real property for the period during which the property will not be needed for a school facilities project or otherwise is not used or useful in the business operations of the NJSDA; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12-4(a) and N.J.S.A. 40A:12-5(a), the City may, by ordinance, acquire any real property or any interest therein, in furtherance of its municipal purposes; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12-14(c), N.J.S.A. 40A:12-15(j) and N.J.S.A. 40A:12-15(l), the City may, by ordinance, authorize the conveyance to a Non-profit corporation or association, for a municipal public purpose, of a leasehold interest in any real property in which the City has an interest that is not needed for public use, (i) for the cultivation or use of vacant lots for gardening or recreational purposes and/or (ii) to cultivate and sell fresh fruits and vegetables; provided that in no event shall any such lease be entered into for, with or on behalf of any commercial, business, trade, manufacturing, wholesaling, retailing, or other profit-making enterprise, nor shall any such lease be entered into with any political or partisan corporation or association or for any political or partisan purpose; and

**WHEREAS**, the City believes that there exists in the City an excess of vacant property, and that vacant properties present numerous problems such as: presenting the opportunity for criminal activity, deterring neighborhood property owners from improving their properties and prospective purchasers and renters from locating into these areas, and serving as a location to dispose of unwanted items; and

**WHEREAS**, the City believes that, due to the scarcity of full service supermarkets and farmers' markets within the City, City residents often suffer from a shortage of fresh fruits and vegetables; and

**WHEREAS**, the City believes that the shortage of sources of fresh fruits and vegetables have contributed to adverse health consequences for City residents; and

**WHEREAS**, Greater Newark Conservancy, Inc. a New Jersey non-profit corporation ("GNC"), has offered to use the NJSDA Parcels for urban agriculture purposes in accordance with the provisions of N.J.S.A. 40A:12-15(j) and N.J.S.A. 40A:12-15(l); and

**WHEREAS**, GNC has represented to the City that hundreds of persons within the City will benefit from the above-referenced statutory purposes; and

**WHEREAS**, the City believes that such use can provide a source of fresh, locally grown fruits and vegetables for City residents and, additionally, can provide incidental passive recreational opportunities; and

**WHEREAS**, accordingly, the City has heretofore prepared and submitted to the NJSDA an Application for Use of SDA Property (the "Application"), seeking approval of a proposed License Agreement (the "License Agreement") that would permit the City to use and occupy the NJSDA Parcel constituting Block 3058 (all) (the "Initial Parcel") on such terms as are approved by the NJSDA; and

**WHEREAS**, the Application contemplated that the City would, in turn, enter into a proposed Sub-License Agreement (the “Sub-License Agreement”) with GNC, by which the City would permit GNC to use and occupy the Initial Parcel for the above-referenced statutory purposes, on substantially the same terms as the License Agreement; and

**WHEREAS**, the City has reached agreement with NJSDA (in accordance with N.J.A.C. 19:35-3.1) and GNC to enter into a License Agreement and Sub-License Agreement, respectively, in order to memorialize the terms and conditions upon which the City can temporarily use the Initial Parcel for urban gardening and now wishes to authorize the execution and delivery thereof, and to authorize and/or ratify certain additional actions in connection therewith; and

**WHEREAS**, the City is willing to enter into agreements identical to the License Agreement and Sub-License Agreement with the NJSDA and GNC, respectively, in respect of all or part of the NJSDA Parcels constituting Block 3045 (all but existing BOE-owned school site and Lots 22, 24 and 26) and Block 3059 (all but Lots 1, 4-8, 33, 38 and 39) (collectively, the “Additional Parcels”), in one or more transactions, provided the approval of the NJSDA is first obtained.

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:**

1. The Application to the NJSDA in respect of the Initial Parcel, in the form attached hereto as Exhibit A, is hereby approved. The submission of the Application to the NJSDA by the City is hereby authorized and/or ratified and confirmed. In addition, the City is authorized to file one or more additional or supplemental Applications with the NJSDA in respect of all or part of the Additional Parcels, in substantially the form of the original Application in respect of the Initial Parcel. The Business Administrator, the Deputy Mayor/Director of the Department of Economic and Housing Development, the Corporation Counsel and the City’s redevelopment counsel are hereby authorized to represent the City in connection with such Applications, and such City officers and the Municipal Clerk are hereby authorized and directed to execute and/or attest to such documents as may be necessary in connection with such Applications.
2. The License Agreement in respect of the Initial Parcel, in the form attached hereto as Exhibit B, is hereby approved. The License Agreement provides for an Initial License Period ending on the last day of the month in which occurs the day preceding the expiration of six (6) months after the date the License Agreement is executed and delivered by the parties (the “Initial License Term”), subject to earlier termination as provided therein, and subject also to extension for additional six (6) month periods, without limit, upon the City’s request, (each, an “Extension Request”); provided, that the maximum term of the License Agreement shall be twenty (20) years and one (1) month. The License Agreement also provides for (i) a license fee payable by the City of One Dollar (\$1.00), (ii) a license fee payable by the City of Five Hundred Dollars (\$500.00) per day if the City should hold over or fail to timely vacate or remove any of its property from the Initial Parcel upon expiration or other termination of the license

granted by the License Agreement, and (iii) additional rent equal to any other sums payable by the City under the terms of the License Agreement, including without limitation amounts attributable to utility charges and any costs which may be incurred by and/or charged to the NJSDA with respect to the Initial Parcel. The Mayor and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development are hereby authorized to execute the License Agreement in the form attached hereto. The Corporation Counsel and/or the Deputy Mayor/Director of Economic and Housing Development are hereby further authorized to take such additional actions as may be necessary to consummate the transactions contemplated by the License Agreement.

3. The City is authorized to enter into a Sub-License Agreement in respect of the Initial Parcel, the form of which is attached hereto as Exhibit C, subject to NJSDA approval. The Sub-License Agreement contains provisions relating to term and license fees/additional rent which are substantially identical to those contained in the License Agreement; provided, that the maximum term of the Sub-License Agreement shall be twenty (20) years and one (1) month. The Deputy Mayor/Director of the Department of Economic and Housing Development of the City shall be the officer responsible for enforcement of the conditions of the Sub-License Agreement. GNC shall annually submit a report to such officer setting out the use to which the Initial Parcel was put during that year, the activities of GNC undertaken in furtherance of the public purpose, the approximate value or cost, if any, of such activities in furtherance of such purpose, and an affirmation of the continued tax-exempt status of GNC pursuant to both State and federal law. The Mayor and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development are hereby authorized to execute the Sub-License Agreement in the form attached hereto. The Corporation Counsel and/or the Deputy Mayor/Director of Economic and Housing Development are hereby further authorized to take such additional actions as may be necessary to consummate the transactions contemplated by the Sub-License Agreement.
  
4. The City is authorized to enter into (i) one or more License Agreements with the NJSDA in respect of the Additional Parcels, the form of which shall be in the form attached hereto as Exhibit B, except for modifications to the Block/Lot and address of the parcels of land, and (ii) one or more Sub-License Agreements with GNC in respect of the Additional Parcels, the form of which shall be in the form attached hereto as Exhibit C, except for modifications to the Block/Lot and address of the parcels of land. The Mayor and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development are hereby authorized to execute such License Agreement (s) and Sub-License Agreement(s). The Corporation Counsel and/or the Deputy Mayor/Director of Economic and Housing Development are hereby further authorized to take such additional actions as may be necessary to consummate the transactions

contemplated by such License Agreement(s) and Sub-License Agreement(s).

5. The Deputy Mayor/Director of the Department of Economic and Housing Development of the City is hereby authorized to submit to the NJSDA, in his or her sole discretion, (i) one or more Extension Requests, for the purpose of extending the term of the License Agreement beyond the Initial License Term (as the same may be extended from time to time), (ii) any Notice of Termination, for the purpose of terminating the term of the License Agreement, and (iii) one or more similar requests and/or notices under the terms of the agreements authorized pursuant to Section 4 of this ordinance; provided, that no such Extension Request may be submitted unless GNC shall have made a corresponding request, which may be by standing order subject to revocation, to the City for an extension of the term of the Sub-License Agreement (or, in the case of the Additional Parcels, any similar agreement authorized pursuant to Section 4 of this ordinance), as provided therein.
6. Copies of the executed License Agreement and Sub-License Agreement (and of any similar agreements authorized pursuant to Section 4 of this ordinance), together with any executed Extension Requests and the corresponding requests from GNC and Notices of Termination (and any similar requests or notices under the terms of the agreements authorized pursuant to Section 4 of this ordinance), shall be placed on file in the Office of the City Clerk by the Deputy Mayor/Director of the Department of Economic and Housing Development.
7. This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

### **STATEMENT**

This ordinance authorizes the execution and delivery of an initial License Agreement and subsequent renewal/additional agreements from the New Jersey Schools Development Authority (the "NJSDA") to the City, and one or more Sub-License Agreements from the City to Greater Newark Conservancy, Inc., a New Jersey non-profit corporation, for urban agriculture purposes, of certain parcels of NJSDA-owned land in the South Ward within the NJSDA's University High School / Hawthorne Elementary School Project Area (consisting of all or a portion of three City blocks generally bounded by Hawthorne Avenue, Clinton Place, Nye Avenue and Hobson Street), consisting of:

- Block 3045 (all but existing Board of Education owned school sites located at Lots 22, 24 and 26)
- Block 3058 (all)
- Block 3059 (all but Lots 1, 4-8, 33, 38 and 39)